DOCUMENT RESUME

ED 158 334 CS 502 105

AUTHOR Rodgers, Raymond S.
TITLE The Wasps in Court: Argument and Audience in the Athenian Dikasteries.
PUB DATE Dec 77
NOTE 13p.; Paper presented at the Annual Meeting of the Speech Communication Association (63rd, Washington, D.C., December 1-4, 1977)

EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS Ancient History; *Courts; *Emotional Response; *Greek Civilization; Hearings; *Persuasive Discourse; Public Speaking; Rhetoric; *Rhetorical Criticism
IDENTIFIERS Aristophanes; *Aristotle; *Juries

ABSTRACT

In an attempt to explain why Aristotle devotes a substantial part of Book Two of "The Rhetoric" to methods for arousing jurors' emotions, despite stating previously that such emotional appeal is nonessential and unethical, this paper examines the nature of the Athenian jury courts, or dikasteries. It first discusses the historical development and general nature of the Athenian jury system, noting that jurors, or dikasts, were often poverty-stricken old men who served as jurors because of the jurors' fees they earned. Next, to show the characteristics of the dikasts, the paper presents a passage from Aristophanes's play "The Wasps," along with statements from several commentators that support the conclusion that, although dikasts probably were prevented from taking bribes, their natures encouraged arguments characterized by appeals to prejudice, pity, and greed. The paper then examines argument in the dikasteries, citing commentators' statements that point to the prevalence in the Athenian courtroom of bitter speeches of accusation and impassioned appeals by defendants. The paper concludes that, although Aristotle would have preferred to avoid the use of pathos in the law courts, he recognized its necessity and efficacy with the men who made up the juries. (GW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

- ED158334

THE WASPS IN COURT: ARGUMENT AND AUDIENCE IN THE ATHENIAN DIKASTERIES

A Paper Presented at the 63rd Annual Convention of the
Speech Communication Association
Sheraton Park Hotel, Washington, D. C.
December 1-4, 1977

by

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Raymond S. Rodgers

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

RAYMOND S. RODGERS
Department of Communication
780 Van Vleet Oval, Room 331 Kaufman Hall
The University of Oklahoma
Norman, Oklahoma 73019

CS502105

THE WASPS IN COURT:
ARGUMENT AND AUDIENCE IN THE ATHENIAN DIKASTERIES

Inconsistency is not a characteristic generally ascribed to the works of Aristotle. However, there is one apparent example of it which takes up a substantial portion of the Rhetoric. Aristotle largely bases his indictment of his contemporary rhetorical competitors upon their preoccupation with what he considers to be such "non-essentials" as arousing the emotions and prejudices of the judges. He condemns the authors of handbooks because "the only question with which these writers here deal is how to put the judge into a given frame of mind."[1] Since he had previously suggested that "it is not right to pervert the judge by moving him to anger or envy or pity--one might as well warp a carpenter's rule before using it,"[2] he now asserts, "a litigant has clearly nothing to do but to show that the alleged fact is so or is not so, that it has or has not happened. As to whether a thing is important or unimportant, just or unjust, the judge must surely refuse to take his instructions from the litigants: he must decide for himself all such points as the law-giver has not already defined for him."[3] The apparent inconsistency arises when we note that Aristotle devotes a substantial part of Book II to just such "non-essentials" as the various types of emotions and the various types of personalities in which they may be found. However, one explanation for the seemingly contradictory concerns is found in Aristotle's fundamentally empirical nature, in this case, what he had observed about the Athenian jury courts. On the one hand, Aristotle is describing things as they should be when he says "there is no need . . . to prove anything except that the facts are what the supporter of a measure maintains they are." But on the other hand, he conceeds that "in forensic oratory this is not enough; to conciliate the listener is what pays here. It is other people's affairs that are to be decided, so that the judges, intent on their own satisfaction and listening with partiality, surrender themselves to the disputants instead of judging between them."[4] Since Aristotle was clear in his feeling that judicial oratory was concerned with less noble affairs than was legislative, he further impugned his contemporaries by accusing them of only writing "treatises on the way to plead in court,"[5] where the jurors "will often have allowed themselves to be so much influenced by feelings of friendship or hatred or self-interest that they lose any clear vision of the truth and have their judgment obscured by consideration of personal pleasure or pain."[6] But being the pragmatist that he was, Aristotle knew that regardless of how dispicable the nature of the jurors may have been, there was still the necessity of coming before them with disputes and therefore he felt obliged to give instruction on how it might be done with success. Consequently, he leaves behind his earlier criticisms when he begins Book II and warns that the orator must be sure that "his hearers themselves should be in just the right frame of mind," and that it is "particularly important . . . that the audience should be in the right frame of mind, in lawsuits."[7] The purpose of this paper is to examine the nature of the men who made up the Athenian jury courts, and the nature of the arguments presented to them as a way of explaining the apparently contradictory admonitions made by Aristotle in Books I and II of the Rhetoric.

Historical Development of the Athenian Jury System

The governmental history of Athens begins in mythology with the monarchy of Ion, "the son of Apollo by the daughter of an Attic king."[8] Between the time of the rule of Theseus over a thousand years before Christ, and the middle of the seventh century B.C. the government evolved from an hereditary monarchy to an oligarchy elected from the Council of the Areopagus. During the reign of Dracon (c. 621 B.C.) the franchise was generally expanded to include more than only the very wealthy. However, the Draconian reforms failed to ameliorate the ill feelings between the righ and poor classes, and in 594 B.C. the great Solon came to power. Solon cancelled all public and private debts, repealed the code of Dracon, and instituted numerous other sweeping governmental and social reforms.[9] Speaking of these reforms, Sir John Sandys, in his abstract of Aristotle's Constitution of Athens, suggests that among the "specially democratical elements" of Solon's constitution was "the

right of appeal to the law-courts."[10] It is clear that the jury courts already existed when Solon came to power, but the extent to which he shaped their nature is not.

It was not until the administration of Cleisthenes in 508 B.C. that further reforms were made in the Athenian government. Generally, he altered the representation on the Council, established the deme as the unit of social organization, and, according to Sandys, "made the constitution more democratic than that of Solon."[11] But the most important reforms did not come for another forty years, in about 462 B.C. George Grote, speaking of this time says that:

> . . . it was certainly to Perikles and Ephialtes that Athens owed the elaborate constitution of her popular Dikasteries or Jury-courts regularly paid, which exercised so important an influence upon the character of the citizens. These two eminent men deprived both the magistrates and the senate of the Areopagus of all the judicial and penal competence which they had hitherto possessed, save and except for the power of imposing a small fine. This judicial power, civil as well as criminal, was transferred to numerous dikasts, or panels of jurors selected from the citizens; 6000 of whom were annually drawn by lot, sworn, and then distributed into ten panels of 500 each; the remainder forming a supplement in case of vacancies. The magistrate, instead of deciding cases or inflicting punishment by his own authority, was now constrained to impanel a jury--that is, to submit each partucular case, which might call for a penalty greater than the small fine to which he was competent, to the judgment of one or other among these numerous popular dikasteries. Which of the ten he should take was determined by lot, so that no one knew beforehand what dikastery would try any particular cause. The magistrate himself presided over it during the trial and submitted to it the question at issue, together with the results of his own preliminary examination; after which came the speeches of accuser and accused, with the statements of their witnesses. So also the civil judicature, which had before been exercised in controversies between man and man by the archons, was withdrawn from them and transferred to these dikasteries under the presidence of an archon.[12]

It is not surprising that Sir Richard Jebb referred to these reforms as "a revolution of the most momentous kind,"[13] and that Grote himself called their establishment "one of the most important and prolific events in all Grecian history."[14]

The Nature of the Athenian Jury System

The Athenian jury courts enjoyed their greatest period of influence during the hundred and twenty-five years between their ascendancy in the time of Pericles and the time of Aristotle. Indeed, they became a fundamental part of what it meant to be an Athenian. Jebb writes that "in the theory of the ancient Greek State, the citizen's whole life was most intimately identified with the life of the city. The city was a larger family, to which every member was bound by a supreme obligation, overriding all private considerations of every kind. Further, a citizen was not regarded as enjoying full citizenship unless he had a direct personal share in public affairs--either continuously, or at least in his turn."[15] In light of this outlook on civic responsibility, the jury courts provided the ideal means of service.

Among the innovations generally credited to Pericles was the practice of providing daily pay to the dikasts, or jurors. Although the original motive was noble, the pay proved to be a mixed blessing for justice in Athens. Jebb writes that is was Pericles' reasoning that "a poor citizen could not be expected to serve as a juror in the law-courts, or to attend the public assembly, if such public duties were to suspend the pursuit of his private calling."[16] Grote argues that the pay "was indeed an essential item in the whole scheme and purpose" of Athenian civil government and that it "helped to furnish a maintenance for old citizens, past the age of military service."[17] But Douglas Parker sees the pay in a different light. He notes that "before the mid-fifth century, dicasts performed this service gratis, but Perikles instituted a small salary, probably in 462,

and the demagogue Kleon increased it to three obols per man per jury day in 425 or 424." He goes on to point out, though, that this amount "was barely enough to sustain life in a small family, and, as a result, jury duty seems to have attracted mainly those who had no other income or chance of any. Primarily the old. Such a system does not necessarily contain within itself assurance of justice to all." Parker therefore suggests that in the view of Aristophanes, "the case was clear and fast: the jurors were inevitably the creatures of Kleon and the other demagogues to whom they owed their pay, and were further, because of their poverty, fair game for bribery."[18] Gilbert Murray, noting that it was during the Peloponnesian War that the institution of pay was begun, supports this view, pointing out that "it was . . . a time a poverty, and the old men, past military age, cut off from their farms in the country and unable to find ordinary employment, were dependant on the fee of three obols which they got for attendance at the Court."[19]

The Athenian Juror

Gilbert Norwood writes that "Dionysius, tyrant of Syracuse, asked Plato to describe the constitution of Athens, wereupon the philosopher sent him the works of Aristophanes."[20] More specifically, Douglas Parker asserts that the comic poet's play, The Wasps "is our greatest single source of knowledge for the minute workings of the Athenian jury system."[21] Although Parker probably overstates the case, Aristophanes' portrait of the Athenian juror is certainly one of our most complete, albeit polemical indices of the characteristics of the members of the dikasteries.

The Wasps, produced in 422 B.C. at the Lenaea, is an all-out frontal assuult on the weaknesses of the Athenian jury system. Despite the fact that Douglas Parker suggests that the play may have been a form of metaphorical revenge upon the Athenian audiences for failing to award the first prize to Aristophanes' masterpiece, The Clouds, in the previous year,[22] it contains detailed and valuable descriptions of the kind of men who made up the courts, and in the view of Cedric Whitman, "rests soundly upon familiarity with the intellectual and spirited conflicts of the day."[23] The plot of The Wasps revolves around the conflict between old Philocleon (Cleon Lover) and his concerned son Phobocleon (Cleon Hater). Whitman describes the old man as having a love of jury duty "so intense that it amounts to a mania,"[24] and as one who "would rather eat a little pot-boiled law suit than red mullet or eels."[25] Because of the old man's addiction to the law courts, his son has locked him up in the house and refuses to allow him to go to court. In one of the most picturesque passages in Greek comedy, a household slave describes the old juror:

> He's a JURY-addict! Most violent case on record. He's wild to render verdicts, and bawls like a baby if ever he misses a seat on the very first bench. He doesn't get any sleep at night, not a wink. Or, if he closes his eyes a speck, he's in Court--all night his mind goes flapping around the water-clock. You know those pebbles that the Jurors drop into the urns marked Guilty and Not Guilty, to record their votes on the verdict? Well, he's squeezed his pebble so often and so hard that when he wakes up, he has three fingers studk together like someone putting incense on the festival alter. And worse. Let him see the name of a fathead faggot scrawled on a wall--'I letch for Demos; he's a doll'--and he scratches beside it, 'I itch for the Jury; it's a jewel.' Once his rooster didn't crow till sundown. Know what he said? 'That cock's corrupt! The officials under investigation bribed him to wake me too late for Court!' Now he shouts for his shows right after supper; he's over there way before dawn, and goes to sleep clutching a courtroom column just like a barnacle. And nasty--he always draws the Long Line / a long line on a wax tablet signified Builty, a short one, Innocent / everyone gets the maximum sentence from him! Then off for home like a bee--or a bumble-bee--was just plastered underneath his fingernails. He's petrified that he might run out of those pebbles he uses for voting; so he keeps a beach in the house. In sum, he's insane; the more we reason with him, the more he judges everybody else. Absolutely hopeless. Incurable.[26]

A central indictment levied at the juries by Aristophanes had to do with their daily pay of three obols. The satirist lampooned the practice as a cause of corruption, feeling that the elderly poor, who made up the juries, became the pawns of the demagogue Kleon because of their dependence on the pay as their only source of income. In a lengthy and scathing speech, the old juror's son artuculates the poet's views on the nature of the courts. He had first called his father's way of life a "Grand Mistake," and had claimed that not only was his father mistaken to judge, but went on to say, "Worse. You're a butt, a laughingstock, all undonscious, to men you nearly enshrine. In a word, you're a SLAVE, and don't know it."[27] He then goes on to prove that the annual total pay for all the jurors in all the courts combined was but a fraction of the revenues of the state, concluding that the jurors were "content to nibble the edges of your empire's garbage."[28] Continuing the theme of the dikast's dependence upon the pay, Phobocleon submits that the practice amounts to "slavery in its most acute form: when men like those, ringed by their toadies and jackals, can roll in public gold, but you are, perforce, overjoyed if they dribble you three little obols! What a fine reward for the toil and agony that won our wars!"[29] Aristophanes next accuses the administrators of the courts as being "strange bedfellows /who/ arrange the case, decide the outcome, rough out a script, and fall to. You'd think they were handling a saw. One pushes, one pulls--and, right in the middle, there's you. For your pay, as it happens; so the whole sordid mess slips by you."[30] Going to the heart of his argument, Aristophanes has Phobocleon say, "and what's your Profit? Your pitiful pay, doled out in dabs--the exact amounts to keep you teetering on the edge of starvation. They mean you to stay poor, don't you see? Their motive is obvious: HUNGER KNOWS NO FRIEND BUT ITS FEEDER. And so, whenever your Tamers are threatened, they cluck their tongues, and flick your leash, and you leap, ravening, on their enemies and tear them to bits. . . . you act like migrant olive pickers: no matter where he leads you, you follow the man with the obols."[31]

The old man, however, had seen himself and his fellows in a different light. But in the cynicism of his speech, we also see the comic poet's attack on the system. Philocleon, with great pleasure, describes his way of life: "No Crowned or Sceptered Potentate can surpass our power. We're kings. The proof is plain: what creature on earth can match the delight, the luxury, power, respect, and glory that falls to the lot of that little old man, the simple Athenian Juror? None!" Among his pleasures was the fact that "no sooner do I go inside than a tender hand steals into mine, still warm from tapping the treasury."[32]

Aristophanes' accusation of bribery appears to be more an argument from probability than from fact. No doubt some bribery did exist, but authorities generally agree that it was infrequent. It is tempting to accept the inference that because the jurors were poor, and because certain officials had instituted the convention of daily pay, that the jurors would be in their service. However in Sections LXIII through LXIX of his Constitution of Athens Aristotle describes in minute detail the provisions for circumventing the bribery of the jurors. They never knew to which of the several courts they would be assigned until immediately prior to the beginning of the trial; they never knew which of the ten dikasteries would be chosen on a particular day; and their voting was strictly by secret ballot.[33] It is to these practices that Kathleen Freeman refers when she writes that at one time bribery had "reached such proportions that at the end of the fifth century B.C. elaborate arrangements were made to prevent the jurors from knowing to which court they would be alloted on any given day until just before the trial opened."[34] Even so, Aristotle asserts that around the time that Pericles instituted the daily pay for jurors, "the organized bribery of juries began, Anytus having first shown the way to it after his command at Pylos; for when he was brought to trial . . . he bribed the court and got off."[35]

George Grote agrees that prior to the Periclean reforms, "there was a good deal of bribery at Athens, where individuals could be approached and dealt with . . . and we may well believe that there were also particular occasions on which money was given to the dikasts, some of whom were punished with death for such corrupt receipt."[36] But he goes on to point out that :

> . . . the dikasteries established by Perikles were inaccessible both to corruption and intimidation: their number, their secret suffrage, and the impossibility of knowing before-hand what individuals would sit in any particular cause, prevented both the one and the other. And besides that, the magnitude of their number, extravagant according to our ideas of judicial business, was essential to this tutelary effect--it served further to render the trial solemn and the verdict imposing on the minds of the parties and spectators, as we may see by the fact that in important causes the dikastery was doubled or tripled.[37]

Gilbert Murray's assessment of the situation explains the warrant for Aristophanes' argument accusing the jurors of bribery, while at the same time, generally rejecting it. He suggests that "at this time the citizens of military age were mostly away on active service: the Courts were manned by the old men who could no longer fight and were probably more bitter in consequence. Then the class war between rich and poor, which so largely underlay the war between Sparta and Athens, introduced a further element of savage prejudice. And the pressure of poverty, and sometimes actual famine, on the Athenian people made all trials for offenses which involved confiscation into terrible temptations."[38] However, Murray believed that "bribery of five hundred individuals would in any case be difficult, and it was made more so by a peculiar rule: it was not settled till the last moment which cases would come before which jury. Even so, no doubt, a really corrupt society could have got round the regulations, and it is a sign of the general soundness of Athenian public life that we scarcely ever hear of any attempt to corrupt the jury courts."[39] Since we know that the Periclean reforms aimed at preventing bribery of the juries were in effect by the time Aristophanes wrote The Wasps, we must view his accusation of bribery as more the product of his hatred of Cleon and his propensity to draw heavily on the broad-brush tactics of the political satirist, than it was a completely accurate charge against the juries.

Despite the fact that the elaborate procedural rules probably succeeded in preventing actual bribery of the dikasts, their age, poverty, and general disposition gave rise to another harmful effect: they were vindictive. Gilbert Murray describes them as "old men from the country, prevented by the war from attending to their farms, prevented by their age from going on military expeditions--military service normally ceased at 60--and consequently left in Athens, old, respectable, very poor, embittered and angry, able to serve on juries or sit in the ecclesia, and according to Aristophanes--offering an easy prey to any smart and unscrupulous speaker who chose to gull them."[40] Indeed, the vengeful nature of the jurors was a major focus of Aristophanes' attack on them, and suggests the title of The Wasps. When the chorus of old men first enters the play, Phobocleon admonishes his slave that "this is not just a bunch of old men, you cretin! These are authentic Athenian jurors, choked with pride, crammed with spleen and venom. Shake them up, anger them--and you'll discover you've annoyed a nest of maddened wasps."[41] For the production of the play, Aristophanes combined the traditional comic pahllus with the stinger of the wasp and had his chorus brandish their appendages in anger whenever aroused, just as the dikasts brandished their symbola, or staffs identifying the court to which they were assigned,[42] when they were aroused in court.

Eileen Barry argues that this facit of the personality of the Athenian jurors was a cause of concern to Aristophanes in a number of plays. She writes that:

> With Aristophanes the question of lawsuits has a special signigicance. Any reference to litigation which the poet makes must be examined for the presence of a satirical attack against the process-loving Athenians. . . . The litigiousness of the citizens of Athens is frequently made the point of attack in passage after passage throughout the plays. Litigiousness was the distinguishing mark of the city, as Strepsiades of the Clouds recognized. That character refused to believe that a certain point on the map of Greece was Athens because there were no dicasts shown.[43]

When Aristophanes has the leader of his wasp chorus describe old Philocleon, we hear that "he's the nastiest man on the jury--malign, marblehearted, and mean! Though others may

yield to defendants' appeals, he thinks that acquittal's obscene."[44] After describing how he has listened to the pleas of the accused, Philocleon feels prepared to judge the case because "I've made my promises of mercy--so I take my seat and proceed to forget every one."[45]

Aristotle reports that each juror took a solemn oath "to give my verdict according to my honest opinion."[46] But Cedric Whitman argues in Aristophanes and the Comic Hero that the oath was not generally followed. "These jurors," he writes, "and in particular Philocleon, have no great concern with hearing both sides of a case, as the Heliastic oath required; their business, as they see it, is to convict, and to acquit anybody is actually liable to endanger their health."[47] He goes on to suggest that "wrath is the spirit of their juridical procedure; they do not so much judge cases as catch victims."[48]

George Grote cites his contemporary, Mitford, and others, as seeing the Athenian dikasts as having a character marked by "extreme severity and cruelty, and a disposition to convict all accused persons brought before them, upon little or no evidence--especially rich accused persons."[49] But primarily because Grote resents Aristophanes' unflattering picture of Socrates in The Clouds, he rejects the widely influential portrait of the dikasts painted by the poet in The Wasps and concludes that "open-mindeness and impressibility of the feelings on all sides by art, eloquence, prayers, tears, invectives, etc., is the true character of the Athenian dikasts." He further argues that "they were, as a general rule, more open to commiseration than to any other feeling."[50] In view of the preponderance of contrary evidence from ancient sources, Grote's defense of the men making up the jury-courts may be more an indication of his tendancy to gloss all things Greek with a nineteenth century awe of the classics than it is an accurate index of their actual characteristics.

Aristotle saw old men somewhat differently than did Professor Grote. In Chapter 13 of Book II of the Rhetoric he advises his students that old men are "distrustful and therefore suspicious of evil," "small-minded," "not generous," "cowardly," "cynical," "too fond of themselves," "slaves to the love of gain" and that they are "querulous, and not disposed to jesting or laughter."[51] K. J. Dover tends to support this description when he suggests that "the ferocity of the old men and their unwillingness to forego the pleasure of convicting a defendant are a nasty kind of compensation for the inferior status which necessarily follows physical enfeeblement, an inferiority for which the outward forms of respect could not compensate enough. Their character is therefore well suited to exploitation by politicians."[52] Although the nature of old men may have made them particularly susceptible to bribery, we can probably conclude that the complex provisions for insuring the integrity of the courts prevented many instances of it from actually occuring. But even though we can safely infer that the personalities of the dikasts was not allowed to result in bribery, there was another result of their natures that all the elaborate Periclean safeguards did not prevent, and that was that the quality of argument in the jury courts was characterized by the most crass appeals to prejudice, pity, and greed.

Argument in the Dikasteries

George Grote, referring to the explosion of civilization which occurred in Greece in the fifth century B.C., argues that "the same development of the national genius, now preparing splendid manifestations both in tragic and comic poetry, was called with redoubled force into the path of oratory, by the new judicial system. A certain power of speech now became necessary, not merely for those who intended to take a prominent part in politics, but also for private citizens to vindicate their rights or repel accusations, in a court of justice."[53] The historian goes on to argue that the growth and popularity of the numerous dikasteries was the direct cause of the development of rhetoric as an academic discipline. He writes that "the teachers of grammar and rhetoric, and the composers of written speeches to be delivered by others, now began to multiply and to acquire an unprecedented importance--as well at Athens as under the contemporary democracy of Syracuse."[54] The occupation of logographos became a lucrative one during this age. The rules of law

courts strictly required that each man must plead his own case. Consequently, suggests Grote, the speech writers and teachers "imparted, to those who were rich enough to purchase it, a peculiar skill in the common weapons, which made them like fencing-masters or professional swordsmen admidst a society of untrained duellists."[55] That the dikasteries had a direct effect upon the development of the rhetorical art is a claim confirmed by Sir Richard Jebb when he writes in The Attic Orators that in the Greek cities, and especially at Athens,

> . . . public speaking had, by 450 B.C., become so enormously important, opened so much to ambition, constituted a safeguard so essential for security of property and person, that not only was there the most various inducement to cultivate it, but it was positively dangerous to neglect it. Further, since in a law-court it was unavailing for the citizen that he could speak well unless the judges thought that he spoke better than his opponent, the art of persuasion was studied with a competitive zeal which wrought together with the whole bent of the Greek genius in securing attention to detail.[56]

Since, as K. J. Dover points out, the juries, "could not be called to account, nor was there any appeal against their verdicts,"[57] it obviously behooved an Athenian to seek the skills of the sophists, either as speech writers, or as teachers.

Although Aristotle had warned that "the arousing of prejudice, pity, anger, and similar emotions has nothing to do with the essential facts,"[58] all evidence suggests that the jurors in the law courts of fifth century Athens heard an ample share of it. Kathleen Freeman's anthology of judicial speeches from the Greek courts provides a wealth of examples of such arguments and she writes that coming before the dikasteries "was like addressing a public meeting; and feeling very often ran high. In the speeches that have come down to us, it is common to find the litigant appealing to the jury 'not to raise a din,' or 'not to shout me down.' The art of playing the jury's feelings of pity and vanity by every possible means was taught in the schools of rhetoric. It was customary for defendants to bring their small children into court and to shed tears; the best people considered this to be shameful and undignified, but it was often done, so that it must have been effective."[59] George Grote confirms this view of the rhetorical bill of fare before the juries when he writes that:

> . . . the feelings of the dikasts counted for more and their reason for less; not merely because of their greater numbers, which naturally heightened the pitch of feeling in each individual, but also because the addresses of the orators or parties formed the prominent part of the procedure, and the depositions of witnesses only a very subordinate part. The dikast therefore heard little of the naked facts, the appropriate subjects for his reason, but he was abundantly supplied with the plausible falsehoods, calumnies, irrelevant statemtents and suggestions, etc., of the parties, and that too in a manner skillfully adapted to his temper.[60]

George Grote suggests that a modern judge would have done much to hamper these practices, but that these "helps to the reason of the dikast were /not present/ while the action upon his feelings, of anger as well as of compassion, was sharpened, as compared with the modern juror- We see in the remaining productions of the attic oratory how much there is of plausible deception, departure from the true issue, and appeals to sympathies, antipathies, and prejudice of every kind, addressed to the dikasteries."[61] The result of this, he concludes, is that "in a considerable proportion of cases, success depended less upon the intrinsic merits of a case, than upon apparent airs of innocence and truth-telling, dexterity of statement, and good general character, in the parties, their witnesses, and the friends who addressed the court on their behalf."[62]

Grote provides an example of such a successful trial in which we see that even the immortal Pericles was not above resorting to playing upon the emotions of the jurors. His lover, political confidant, and possibly speech-writer, Aspasia, had been indicted by the comic poet Hermippus for "impiety /and/ as participant in the philosophical discussions

held, and the opinions professed, among the society of Perikles." (Later Socrates would be executed following conviction on just such charges.) Grote writes that "Perikles himself defended Aspasia before the dikastery. . . . He defended her successfully and procured a verdict of acquittal; but we are not surprised to hear that his speech was marked by the strongest personal emotions and even tears. The dikasts were accustomed to such appeals to their sympathies, sometimes to extravagant excess, from ordinary accused persons."[63] But once again, Grote minimizes any actual harm from such arguments by suggesting that "we have no means of knowing to what extent /emotional arguments/ actually perverted the judgment of the hearers. Probably the frequent habit of sitting in the dikastery gave them a penetration in detecting sophistry not often possessed by non-professional citizens."[64]

George Kennedy, in The Art of Persuasion in Greece, sees the situation differently. He argues that "the popular and unprofessional nature of the jury much relaxed the need for logical, relevant treatment of points of law and increased the opportunites for irrelevant, but brilliant digressions and emotional appeal. It is a direct result of these conditions that all early handbooks of rhetoric were devoted to expounding the techniques of judicial oratory to prospective litigants."[65]

In contrast to the judicial systems of today, the courts of Athens had no official position corresponding to public prosecutor. Generally, the wronged party, or in the case of murder, the next of kin, brought the indictment and delivered the speech of accusation personally. Grote writes that such "accusatory speeches in Attic oratory . . . were expressed with a bitterness which is now banished from English criminal judicature."[66] He goes on to describe the danger which attended the role of accuser in the dikasteries:

> That someone should undertake this duty was indispensable for the protection of the city, otherwise the responsibility to which official persons were subjected after their term of office would have been merely nominal: and we have proof enough that the general public morality of these official persons, acting individually, was by no means high. But the duty was, at the same time, one which most persons would and did shun. The prosecutor, while obnoxious to general dislike, gained nothing even by the most complete success; and if he failed so much as not to procure a minority of votes among the dikasts, equal to one-fifth of the numbers present, he was condemned to pay a fine of 1000 drachms. What was still more serious, he drew upon himself a formidable private hatred--from the friends, partisans, and the political club of the accused party--extremely menacing to his own future security and comfort in a community like Athens. There was, therefore, little motive to accept, and great motive to decline, the task of prosecuting on public grounds. A prudent politicain at Athens would undertake it occasionally, and against special rivals; but he would carefully guard himself against the reputation of doing it frequently or by inclination--and the oratory constantly do so guard themselves in those speeches which yet remain."[67]

In contrast to the bitter speeches of accusation, Grote suggests "may be set the impassioned and emphatic appeals made by defendants and their friends to the commiseration of the dikasts; appeals the more often successful, because they came last, immediately before decision was pronounced."[68] This judgment must be taken as merely speculation on Grote's part though, for Kathleen Freeman writes of the fifteen speeches in her anthology, that "no man, even with the whole of the depositions before him, could ever have predicted which way the Athenian jury-court would go; nor can one guess today at their decision."[69] Indeed, if any evidence is to be accepted on the probable outcome of the cases, it must be balanced against the view of the jurors held by their contemporary critic, Aristophanes. A member of the chorus of The Wasps says of old Philocleon that "mercy is bad for his allergy,"[70] and when he describes his life in court, Philocleon asserts with smug pride that "every rhetorical trick in the book is unfolded, and, as for kinds of flattery--well, if I haven't heard it in Court, it doesn't exist."[71] He relates that among these tricks is humor. After remaining unmoved by the pleas of the paupers, he says "next /come/ the Story-tellers, with Fairy=Tales, or little quips from Aesop, or else, on occasion, a

Joke. If I shake with laughter, the theory runs, I'll shed my anger. I don't."[72] There is even the suggestion that the patron god of the courts, whose form was that of a wolf, was invested with the same implacable personality as the jurors. When the old man is attempting to escape his son's house in order to attend court, Douglas Parker translates his prayer most colorfully: "Lord of Lawsuits, Patron of Plaintiffs, Lykos my Master, whose eternal delights--even as mine--are the screams and wails of convicted defendants; whose shrine is set, alone of the gods, to sit on the losing side by the mourner's seat--save thy neighbor, preserve him intact, and nevermore, from this day hence, will I piss on thy precinct or fart on thy fence."[73]

Conclusion

Despite their potential for bribery, despite the vengeful nature of the jurors, and despite the kinds of emotional harangues which too frequently characterized judicial oratory, we must agree with George Grote that "these numerous dikasteries afforded the only organ which Grecian politics could devise for getting redress against powerful criminals, public as well as private."[74] He is indeed correct when he writes that "whatever may have been their defects as judicial instruments, as a stimulus to thought and speech, their efficacy was unparalleled in the circumstance of Athenian society."[75] K. J. Dover balanced their defects against their advantages and concluded that "it is only reasonable that men who are past military service and have time on their hands because they have retired from day-to-day preoccupation with estate or craft or trade should spend some of that time on public service, and a mass of old men sitting as a jury is the democratic equivalent of an immemorial feature of human society, the elders of the community sitting as judges."[76]

Thus, although he would have preferred to avoid the use of pathos in the law courts, Aristotle recognized its necessity and its efficacy with the men who made up the juries. Nevertheless, when he described Solon's constitution, he counted among its "three most democratic features . . . the right of appeal to the jury-court--for the people, having the power of the vote, becomes /sic/ sovereign in the government."[77] Because of their popular make-up, Grote tells us that they never "lost the confidence of their fellow-citizens generally."[78] Their impact upon Grecian society was profound and their impact upon legal, rhetorical, and philosophical thought was long-lasting. They not only reflected the upward yearning of Western civilization which typified fifth century Athens, but, to a large extent, caused it. We must again agree with George Grote that "the public and frequent dikasteries . . . were essential to the development of that demand out of which grew not only Grecian oratory, but also, as secondary products, the speculative and moral political philosophy, and the didactic analysis of rhetoric and grammar, which long survived after Grecian creative genius had passed away."[79]

ENDNOTES

[1]Aristotle, The Rhetoric, trans. Rhys Roberts in Friedrich Solmsen, ed. The Rhetoric and Poetics of Aristotle (New York: The Modern Library, 1954), 1354a, p. 21.

[2]Ibid., p. 20. [3]Ibid. [4]Ibid., 1354b, p. 21. [5]Ibid. [6]Ibid., pp. 20-21.

[7]Ibid., 1377b, p. 91.

[8]Sir John Edwin Sandys, Aristotle's Constitution of Athens, 2nd ed. (London: Macmillan & Co., Limited, 1912), p. lxxi.

[9]Ibid., p. lxxii. [10]Ibid., p. lxxiii. [11]Ibid., p. lxxiv.

[12]George Grote, A History of Greece IV, 2nd ed. (London: J. Murray, 1888), p. 441.

[13]Sir Richard Jebb, "The Age of Pericles," in Lane Cooper, ed. The Greek Genius and Its Influence (New Haven: Yale University Press, 1928), p. 67.

[14]Grote, History of Greece IV, pp. 485-486. [15]Jebb, p. 68. [16]Ibid.

[17]Grote, History of Greece IV, p. 486.

[18]Douglas Parker, in Aristophanes, The Wasps, trans. Douglas Parker (Ann Arbor: University of Michigan Press, 1962), p. 1.

[19]Gilbert Murray, Aristophanes (Oxford: At the Clarendon Press, 1933), p. 73.

[20]Gilbert Norwood, Greek Comedy (London: Methuen & Co. Ltd., 1931), p. 202.

[21]Parker, p. 4. [22]Ibid., p. 2.

[23]Cedric Whitman, Aristophanes and The Comic Hero (Cambridge: Harvard University Press, 1964), p. 166.

[24]Ibid., p. 145 [25]Ibid., p. 150.

[26]Aristophanes, The Wasps, trans. Douglas Parker, p. 15.

[27]Ibid., p. 44. [28]Ibid., p. 54. [29]Ibid., p. 55. [30]Ibid. [31]Ibid., p.55-56

[32]This, too, is a delightful, but lengthy speech, only a small portion of which is recounted here.

[33]see Aristotle, Athenian Constitution in H. Rackham, trans. Aristotle: The Athenian Constitution, The Eudemian Ethics, On Virtues and Vices (Cambridge: Harvard University Press, 1938), pp. 171-181.

[34]Kathleen Freeman, The Murder of Herodes (New York: W. W. Norton & Co., Inc., 1963), p. 18.

[35]Aristotle, Athenian Constitution, trans. H. Rackham, pp. 81-83.

[36]Grote, IV, note p. 464 [37]Ibid., pp. 467-468. [38]Murray, Aristophanes, p. 70.

[39]Ibid., p. 69. [40]Ibid., p. 82. [41]Aristophanes, The Wasps, trans. Douglas Parker, p. 25.

[42]Eileen Barry, "The Ecclesiazusae as a Political Satire," Unpublished Ph.D. Dissertation, The University of Chicago, 1942, pp. 54-55.

[43]Ibid., pp. 36-37. [44]Aristophanes, The Wasps, trans. Douglas Parker, p. 28.

[45]Ibid., p. 47 [46]Aristotle, The Rhetoric, 1357b, p. 84. [47]Whitman, p. 146.

[48]Ibid. [49]Grote, IV, note, p. 478. [50]Ibid.

[51]Aristotle, The Rhetoric 1389b-1390a, pp. 123-125.

[52]K. J. Dover, Aristophanic Comedy (Berkeley: University of California Press, 1972), p. 130.

[53]Grote, IV, p. 481. [54]Ibid., p. 482. [55]Ibid., p. 484.

[56]R. C. Jebb, The Attic Orators from Antiphon to Isaeus (London: Macmillan & Co., 1893), p. lxxvi.

[57]Dover, p. 129. [58]Aristotle, The Rhetoric, 1354a, p. 20. [59]Freeman, p. 18.

[60]Grote, IV, pp. 477-478 [61]Ibid., p. 479. [62]Ibid., p. 480 [63]Ibid. V, p. 26.

[64]Ibid. IV, p. 480.

[65]George Kennedy, The Art of Persuasion in Greece (Princeton, New Jersey: Princeton University Press, 1963), p. 28.

[66]Grote, IV, p. 480. [67]Ibid., V, p. 397. [68]Ibid.. IV, p. 480

[69]Freeman, p. 13. [70]Aristophanes, The Wasps, trans. Douglas Parker, p. 28.

[71]Ibid., p. 47. [72]Ibid., p. 49. [73]Ibid., p. 34. [74]Grote, IV, p. 481.

[75]Ibid., p. 481. [76]Dover, p. 128. [77]Aristotle, Athenian Constitution, trans. H. Rackham, p. 33.

[78]Grote, IV, p. 481. [79]Ibid., p. 485.